

Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
)
Petition for Reconsideration of the)
Request for Review of the Decision of the)
Universal Service Administrator by)
)
Maine School Administrative District No. 49)
Fairfield, Maine)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-126566

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: February 25, 2002

Released: February 27, 2002

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Petition for Reconsideration filed by Maine School Administrative District No. 49 (Maine), Fairfield, Maine.¹ Maine seeks reconsideration of our denial of its request for review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² For the reasons set forth below, the petition is denied.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing

¹ *Petition for Reconsideration by Maine Administrative District No. 49*, CC Docket Nos. 96-45 and 97-21, Petition for Reconsideration, filed March 30, 2001 (Petition for Reconsideration).

² *Request for Review by Maine School Administrative District No. 49, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-160143, CC Dockets No. 96-45 and 97-21, Order, DA 01-524 (Com. Car. Bur. rel. March 1, 2001) (*Request for Review by Maine*). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's web site for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.⁷

3. Applicants may only seek support for eligible services.⁸ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁹ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."¹⁰ The instructions direct applicants to SLD's web site for additional information. Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than thirty percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute thirty percent or more of the total.¹¹

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order in part and reversing and remanding on unrelated grounds*), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

⁷ *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (Com. Car. Bur. 2000).

⁸ 47 C.F.R. § 54.504 *et seq.*

⁹ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

¹⁰ Form 471 Instructions at 16.

¹¹ *See Request for Review of the Decision of the Universal Service Administrative Company by Ugly Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD 113262, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000) (Anderson School). The "thirty-percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on

Similarly, SLD will also deny support for a particular product—even if the remainder of the funding request is granted—if more than thirty percent of the requested support associated with the product is attributable to ineligible services. In either the funding-request or product-specific situation, an applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

4. At issue is Funding Request Number (FRN) 189065 of Maine’s Funding Year 2 application for discounts, which sought discounts on internal connections.¹² In our previous decision, we upheld SLD’s decision to deny funding for FRN 189065.¹³ We found that, “[a]ccording to the documentation supplied by Maine, the equipment at issue provides a number of services, both eligible, such as PBX and PC Attendant Console, and ineligible, such as voice mail.”¹⁴ We further found Maine’s application had failed to distinguish or break out the cost of the ineligible services.¹⁵ We concluded that SLD had properly determined that a significant portion of the request was ineligible and had properly denied it on that basis.¹⁶

5. In its Petition for Reconsideration, Maine offers a breakdown of ineligible costs.¹⁷ The sum of the ineligible costs for each of the components of its request, it indicates, is less than thirty percent of the total of the request.¹⁸ It argues that the eligible portion of FRN 189065 should therefore be funded under the thirty-percent rule.¹⁹

6. Section 1.106(c) of the Commission's rules provides that a petition for reconsideration of an order may rely on facts not previously presented to the Commission only if: 1) the petition relies on facts that have occurred or circumstances that have changed since the last opportunity to present such matters; 2) the petition relies on facts unknown to the petitioner until after the last opportunities to present such matters could not, through ordinary diligence,

Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than thirty percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If thirty percent or more of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The thirty-percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible serv.

¹² See FCC Form 471, Maine School Administrative District No. 49, filed April 5, 1999.

¹³ *Request for Review by Maine*, para. 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Petition for Reconsideration at 1-3.

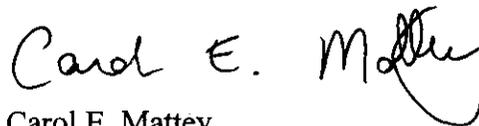
¹⁸ *Id.* at 3.

¹⁹ *Id.*

have been learned prior to that opportunity; or 3) consideration of the facts relied on is required by the public interest.²⁰ Here, Maine has presented new facts regarding the breakdown of ineligible and eligible costs, but it has not demonstrated that these are facts that have occurred since the last opportunity to seek review or that it could not have learned of these facts before that time. Further, because the purpose of the new evidence rule, which is to "encourage[] applicants and others to provide complete information at an early stage, thereby minimizing the need for reconsideration proceedings," is served by enforcing the rule here, and because no third party before us will be harmed by refusal to consider the new evidence, we find that consideration of the new facts is not required by the public interest.²¹ We therefore deny Maine's Petition for Reconsideration.²²

7. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), that the Petition for Reconsideration filed by Maine School Administrative District No. 49, Fairfield, Maine, on March 30, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief
Common Carrier Bureau

²⁰ See 47 C.F.R. § 1.106(c).

²¹ *Application of Carolyn S. Hagedorn*, 11 FCC Rcd 1695, 1696 (1996).

²² Maine also argues that several other schools have applied for discounts on the same equipment and services at issue here and have been fully funded. Petition for Reconsideration at 4. Even assuming that this allegation is correct, it provides no basis for relief. It is possible that these other schools offered the breakdown of eligible and ineligible costs that Maine failed to provide.